

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL MCGEE,

Petitioner,

v.

Case No. 06-C-1174

BYRAN BARTOW,

Respondent.

ORDER

Michael McGee filed this petition pursuant to 28 U.S.C. § 2254, asserting that his confinement under Chapter 980 was imposed in violation of the Constitution. In substance, the petition is identical to the petition he filed one week earlier in case number 06-C-1151. The first-filed petition includes the same argument relating to commitment based on a diagnosis of personality disorder. *See Kansas v. Crane*, 534 U.S. 407 (2002). It also suggests ineffective assistance of counsel. The present petition focuses on the argument that antisocial personality disorder cannot be a basis for involuntary commitment.

Regardless of what the claims are, however, this petition is an improper second petition, which does not qualify under 28 U.S.C. § 2244(b) for filing as a second or successive petition. Even if it did qualify, the petitioner has not received permission from the court of appeals to file it. 28 U.S.C. § 2244(b)(3)(A). If petitioner inadvertently failed to include a claim in his original petition, it is not too late to seek leave to amend. *See Fed. R. Civ. P. 15(a)*. But he may not simply file a second petition.

THEREFORE, IT IS ORDERED that the petition be **DISMISSED** as a successive petition under 28 U.S.C. § 2244(b)(1). Petitioner is warned that frivolous filings or abuse of the judicial system may constitute grounds for sanctions.

Dated this 17th day of November, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge